

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ANGELA MCLENDON

(b) County of Residence of First Listed Plaintiff _____

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Craig Thor Kimmel, Esquire
Kimmel & Silverman, P.C.
30 E. Butler Pike
Ambler, PA 19002
(215) 540-8888

DEFENDANTS

COMMONWEALTH FINANCIAL SYSTEMS, INC., JOHN KOTULA, individually and on behalf of Commonwealth

County of Residence of First Listed Defendant _____

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) _____

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. SECTION 1692

Brief description of cause:

Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S)**

(See instructions):

JUDGE _____

DOCKET NUMBER _____

Explanation: _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

03/21/2013

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

ANGELA MCLENDON	:	
	:	
v.	:	CIVIL ACTION
	:	
	:	NO.
COMMONWELATH FINANCIAL	:	
SYSTEMS, INC., JOHN KOTULA,	:	
Individually and on behalf of Commonwealth	:	
Financial Systems, Inc., and DAVID	:	
MUNLEY, Individually and on behalf of	:	
Commonwealth Financial Systems, Inc.	:	

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (X)
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

03/21/2013
Date

Craig Thor Kimmel
Attorney-at-law

Plaintiff, Angela McLendon
Attorney for

215-540-8888
Telephone

877-788-2864
FAX Number

kimmel@creditlaw.com
E-Mail Address

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 11402 Woodview Dr., Hagertown, MD 21724

Address of Defendant: 245 Main St., Dickson City, PA 18519

Place of Accident, Incident or Transaction: _____
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases
(Please specify) 15 U.S.C. § 1692

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases

(Please specify) _____

ARBITRATION CERTIFICATION

(Check Appropriate Category)

1. Craig Thor Kimmel, counsel of record do hereby certify:
- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 03/21/2013

Attorney-at-Law

57100

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 03/21/2013

Attorney-at-Law

57100

Attorney I.D.#

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 EASTERN DISTRICT OF PENNSYLVANIA

4 ANGELA MCLENDON,

5 Plaintiff,

6 v.

7 COMMONWEALTH FINANCIAL
8 SYSTEMS, INC.,

9 JOHN KOTULA, individually and on behalf
10 of Commonwealth Financial Systems, Inc.,

11 DAVID MUNLEY, individually and on
12 behalf of Commonwealth financial systems,
Inc.,

13 Defendants.

Case No.:

COMPLAINT AND DEMAND FOR
JURY TRIAL

(Unlawful Debt Collection Practices)

14 ANGELA MCLENDON ("Plaintiff"), by her attorneys, KIMMEL & SILVERMAN,
15 P.C., alleges the following against COMMONWEALTH FINANCIAL SYSTEMS, INC., JOHN
16 KOTULA, individually and on behalf of Commonwealth Financial Systems, Inc., and DAVID
17 MUNLEY, individually and on behalf of Commonwealth Financial systems, Inc.
18 ("Defendants"):

19 INTRODUCTION

20 1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15
21 U.S.C. § 1692 *et seq.* ("FDCPA").

22 JURISDICTION AND VENUE

23 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states
24 that such actions may be brought and heard before "any appropriate United States district court
25

1 without regard to the amount in controversy,” and 28 U.S.C. § 1331 grants this court original
2 jurisdiction of all civil actions arising under the laws of the United States.

3 3. Defendants conduct business in the Commonwealth of Pennsylvania, and as
4 such, personal jurisdiction is established.

5 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).

6 **PARTIES**

7 5. Plaintiff is a natural person who at all relevant times was residing in Langhorne,
8 Pennsylvania.

9 6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §1692a(3).

10 7. Defendant Commonwealth Financial Systems, Inc. (“CFS”) is a national debt
11 collection company with its corporate headquarters located at 245 Main Street, Dickson City,
12 Pennsylvania 18519.

13 8. Defendant John Kotula (“Kotula”) is the Chief Executive Officer of CFS, and at
14 all relevant times controlled the actions of CFS and all of its employees.

15 9. Defendant David Munley (“Munley”) is a debt collector employed by CFS, and
16 is the individual directly responsible for taking the actions described below.

17 10. Defendants are “debt collector[s]” as that term is defined by 15 U.S.C. §
18 1692a(6), as they directly and indirectly attempted to collect a debt from Plaintiff.

19 11. Defendants acted through their agents, employees, officers, members, directors,
20 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

21 **FACTUAL ALLEGATIONS**

22 12. At all relevant times, Defendants contacted Plaintiff in an attempt to collect a
23

1 consumer debt.

2 13. The alleged debt at issue, a CitiBank Master Card (hereinafter “the Debt”), arose
3 out of transactions which were primarily for personal, family, or household purposes.

4 14. By way of background, Defendant CFS sued Plaintiff over the Debt in the
5 Philadelphia Court of Common Pleas in April 2005. See Exhibit A, Docket Report for Case No.
6 050403625.

7 15. During that action, Defendant CFS failed to appear at a scheduled arbitration and
8 failed to prosecute its action. See Id.

9 16. As a result, on December 19, 2005, the Philadelphia Court of Common Pleas
10 entered a Judgment Non Pros. See Id.

11 17. Defendant CFS did not obtain a judgment *against* Plaintiff in that action.

12 18. There is no judgment against Plaintiff for the Debt.

13 19. Nevertheless, beginning in July 2012, Defendants contacted Plaintiff by
14 telephone and through the mail in an attempt to collect the Debt.

15 20. Defendant Munley spoke with Plaintiff over the telephone about the Debt.

16 21. In his conversations with Plaintiff, Defendant Munley deceptively claimed to
17 Plaintiff that she was sued over the Debt in 2011.

18 22. Defendant Munley stated that Defendants had obtained a judgment and implied
19 that Plaintiff’s vehicle would be seized if she did not pay the Debt.

20 23. Contrary to these assertions, Plaintiff was not sued for the Debt in 2011, and the
21 claim referred to involved the 2005 litigation which resulted in a judgment non pros against
22 Defendant CFS—not a monetary judgment adverse to Plaintiff.

23 24. In a further attempt to collect the debt, Defendants sent Plaintiff a letter
24

1 demanding payment on July 19, 2012. See Exhibit B, the July 19, 2012, letter to Plaintiff.

2 25. In this letter, Defendants state that a judgment has been secured against Plaintiff.

3 26. Further, Defendants state that they would execute on that judgment if payment
4 were not made and stated that failure to pay would result in additional legal fees.

5 27. Defendants' reference to a judgment *against* Plaintiff in its letter is false and
6 misleading, as no such judgment exists. In fact, the case number referenced on Defendants' July
7 19, 2012, letter is for the 2005 case that resulted in the case being dismissed for Defendants'
8 failure to prosecute.

9 28. Defendants' threat to execute against Plaintiff is false and misleading as no
10 judgment exists to execute.

11 29. Finally, Defendants' reference to additional legal fees that would arise as a result
12 of executing is false and misleading as Defendants cannot charge fees for executing a judgment
13 that does not exist.

14 30. At the time that Defendants threatened to seize Plaintiff's vehicle, they could not
15 legally take such action.

16 31. At the time that Defendants threatened to execute on a judgment against Plaintiff,
17 they could not legally take such action.
18

19
20 **DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT**

21 **COUNT I**

22 32. Defendants' conduct, detailed in the preceding paragraphs, violated 15 U.S.C.
23 §§1692e, 1692e(2)(A), 1692(e)(4) and 1692e(5).
24
25

- a. Section 1692e of the FDCPA prohibits a debt collector from using any false, deceptive, or misleading representations or means in connection with the collection of any debt.
- b. Section 1692e(2)(A) of the FDCPA prohibits a debt collector from falsely representing the character, amount, or legal status of any debt.
- c. Section 1692e(4) of the FDCPA prohibits a debt collector from representing or implying that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or credit intends to take such action.
- d. Section 1692e(5) of the FDCPA prohibits a debt collector from threatening to take any action that cannot legally be taken or that is not intended to be taken.
- e. Here, Defendants violated §§1692e, 1692e(2)(A), 1692e(4) and 1692e(5) of the FDCPA when they falsely stated that they possessed a judgment against Plaintiff, implied that they intended to seize Plaintiff's vehicle in order to satisfy that judgment, stated in their correspondence that they intended to execute on the judgment if Plaintiff did not pay, and stated that Plaintiff would be subject to additional fees if Defendants executed on the non-existent judgment.

COUNT II

33. Defendant's conduct, as detailed in the preceding paragraphs, violated 15 U.S.C. §1692f.

- 1 a. A debt collector violates §1692f of the FDCPA by using unfair or
2 unconscionable means to collect or attempt to collect any debt.
3 b. Here, Defendant violated §1692f of the FDCPA by engaging in other unfair
4 and unconscionable debt collection practices, including attempting to collect
5 upon a judgment when there was no judgment.
6

7 WHEREFORE, Plaintiff, ANGELA MCLENDON, respectfully prays for a judgment as
8 follows:

- 9 a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
10 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to
11 15 U.S.C. § 1692k(a)(2)(A);
12 c. All reasonable attorneys' fees, witness fees, court costs and other litigation
13 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and
14 d. Any other relief deemed appropriate by this Honorable Court.
15

16 **DEMAND FOR JURY TRIAL**

17 PLEASE TAKE NOTICE that Plaintiff ANGELA MCLENDON, demands a jury trial in
18 this case.

19
20 DATED: 03/21/2013

RESPECTFULLY SUBMITTED,

KIMMEL & SILVERMAN, P.C.

21 By: _____

CRAIG THOR KIMMEL

Attorney ID # 57100

Kimmel & Silverman, P.C.

30 E. Butler Pike

Ambler, PA 19002

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